IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9427 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANAKLATA CHANDULAL BHUPTANI

Versus

CHIEF CONTROLLING REVENUE AUTHORITY

Appearance:

1. Special Civil Application No. 9427 of 1999

MR SANDEEP N BHATT for Petitioner No. 1

Ms NANDINI JOSHI, AGP for Respondent No. 1-2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 18/07/2001

ORAL JUDGEMENT

Rule. At the suggestion of the Court, Ms Nandini Joshi, learned AGP appears and waives service of Rule for the respondents and the petition is taken up for final disposal today.

2. What is challenged in this petition under Article 226 of the Constitution is the order dated 5.10.1999

passed by the Chief Controlling Revenue Authority dismissing the petitioner's appeal against the order dated 30.10.1998 passed by the Deputy Collector (Stamp Valuation), Rajkot under Section 32-B of the Bombay Stamp Act.

3. The petitioner purchased a constructed property on land admeasuring 186.61 sq.mtrs. in the city of Rajkot by registered sale deed dated 5.9.1991. The consideration mentioned in the document was Rs.1,00,000/and accordingly the stamp duty of Rs.10,000/-- was paid. The Deputy Collector issued the show cause notice calling upon the petitioner to show cause why the market value of the property should not be determined at Rs.3,35,891/-. The petitioner submitted his reply with the documents contending that the property in question was a rented property and that, therefore, the market value of the property was Rs.1,00,000/- as mentioned in the sale deed. The Deputy Collector, however, held that the market value of the property was Rs.3,35,891/- and directed the petitioner to pay deficit stamp duty of Rs.20,000/-- plus penalty of Rs.250/-. The petitioner carried the matter in appeal before the Chief Controlling Revenue Authority who dismissed the appeal. Hence, this petition.

4. The learned counsel for the petitioner has submitted that although the petitioner had produced documentary evidence and had pointed out that the property in question was a rented property and, therefore, it would not fetch the normal market price, the Chief Controlling Authority has not dealt with the said contention and has dismissed the appeal without giving any reasons.

5. On the other hand, Ms Nandini Joshi, learned AGP for the respondents has submitted that since the Deputy Collector had passed the order after giving the petitioner an opportunity of hearing and after considering his reply and the market value as indicated in the show cause notice was subsequently reduced, it shows that there was application of mind by the Deputy Collector. Hence, it was not necessary for the Chief Controlling Revenue Authority to give detailed reasons for dismissing the appeal.

6. Having heard the learned counsel for the parties, it appears to the Court that since the petitioner raised a substantial defence that the property was tenanted, both the Deputy Collector as well as the Chief Controlling Revenue Authority were required to deal with

the said contention. If a finding is to be given that the property was a tenanted property, it would substantially affect the market value of the property. It also appears that the petitioner had mentioned in his written reply that there were two documents which were not taken into consideration by the Deputy Collector. All these facts were required to be considered by the authorities and a speaking order was required to be passed by the Deputy Collector which has not been done. Since this has not been done, it would be just and proper to set aside the impugned order dated 30.10.1996 passed by the Dy. Collector (Annexure "D") and the order dated 5.10.1999 passed by the Chief Controlling Revenue Authority (Annexure "I"). Accordingly the said orders are set aside and the matter is remanded to the Deputy Collector for taking a fresh decision in the matter in accordance with law after giving the petitioner an opportunity of being heard.

The petitioner shall cooperate for expeditious disposal of the proceedings.

7. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

sundar/-